**UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

DATA TREASURY CORPORATION	§	
Plaintiff	§	
	§	
vs.	§	
	§	
WELLS FARGO & COMPANY; WELLS FARGO BANK, NATIONAL ASSOCIATION; BANK OF AMERICA CORPORATION, BANK OF AMERICA, NATIONAL ASSOCIATION; U.S. BANCORP; U.S. BANK, NATIONAL ASSOCIATION; WACHOVIA CORPORATION; WACHOVIA BANK, NATIONAL ASSOCIATION, SUNTRUST BANKS, INC.; SUNTRUST BANK; BB&T CORPORATION; BRANCH BANKING AND TRUST COMPANY; BANCORPSOUTH, INC.; BANCORPSOUTH BANK; COMPASS BANCSHARES, INC.; COMPASS BANK; CULLEN/FROST BANKERS, INC.; THE FROST NATIONAL BANK; FIRST HORIZON NATIONAL CORPORATION; FIRST TENNESSEE BANK, NATIONAL ASSOCIATION; HSBC NORTH AMERICA HOLDINGS INC.; HSBC BANK USA, N.A.; HARRIS BANKCORP, INC.; HARRIS N.A.; NATIONAL CITY CORPORATION; NATIONAL CITY BANK; ZIONS BANCORPORATION; ZIONS FIRST NATIONAL BANK; BANK OF NEW YORK CO., INC.; THE BANK OF NEW YORK; UNIONBANCAL CORPORATION; UNION BANK OF CALIFORNIA, NATIONAL ASSOCIATION; BANK OF TOKYO-MITSUBISHI UFJ, LTD.; CITIZENS FINANCIAL GROUP, INC. CITY NATIONAL CORPORATION;	§	**Civil Action No. 2-06CV-72-DF**

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CITY NATIONAL BANK; COMERICA	**§**
INCORPORATED; COMERICA BANK	**§**
& TRUST, NATIONAL ASSOCIATION;	**§**
DEUTSCHE BANK TRUST COMPANY	**§**
AMERICAS; FIRST CITIZENS	**§**
BANCSHARES, INC.; FIRST CITIZENS	**§**
BANK & TRUST COMPANY;	**§**
KEYCORP;	**§**
KEYBANK NATIONAL ASSOCIATION;	**§**
LASALLE BANK CORPORATION;	**§**
LASALLE BANK NA; M&T BANK	**§**
CORPORATION; M&T BANK;	**§**
THE PNC FINANCIAL SERVICES	**§**
GROUP, INC.; PNC BANK,	**§**
NATIONAL ASSOCIATION	**§**
UBS AMERICAS, INC.; SMALL VALUE	**§**
PAYMENTS COMPANY, LLC; THE	**§**
CLEARING HOUSE PAYMENTS	**§**
COMPANY, LLC; MAGTEK, INC.;	**§**
FIRST DATA CORPORATION;	**§**
TELECHEK SERVICES, INC. and	**§**
REMITCO, LLC	**§**
Defendants.	**§**

ORIGINAL ANSWER AND COUNTERCLAIM OF DEFENDANTS FIRST HORIZON NATIONAL CORPORATION AND FIRST TENNESSEE BANK NATIONAL ASSOCIATION

Defendants FIRST HORIZON NATIONAL CORPORATION ("First Horizon") and FIRST TENNESSEE BANK NATIONAL ASSOCIATION ("First Tennessee") respectfully file this their Original Answer to Plaintiff's First Amended Complaint for Patent Infringement ("Complaint") and Original Counterclaim. First Horizon and First Tennessee reserve all rights to seek any appropriate relief, including a stay of this matter, given the patents in issue asserted against First Horizon and First Tennessee are currently undergoing reexamination by the United States Patent and Trademark Office ("USPTO").

PRELIMINARY STATEMENT

First Horizon is a holding company conducting no operations in Texas or elsewhere and thus continues to deny that it is subject to the jurisdiction of this Court and to question how

Plaintiff can in good faith claim it engages in any allegedly infringing acts. Plaintiff's Preliminary Infringement Contentions make no distinction between First Horizon and its operating bank and provide no basis for the claims against First Horizon. First Horizon reserves the right to seek the appropriate remedies from the Court. Subject to the foregoing, First Horizon and First Tennessee answer the Complaint as follows:

I. THE PARTIES

1. First Horizon and First Tennessee are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 1 of the Complaint, and, accordingly, deny the same.

2. First Horizon and First Tennessee are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 2 of the Complaint, and, accordingly, deny the same.

3. First Horizon and First Tennessee are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 3 of the Complaint, and, accordingly, deny the same.

4. First Horizon and First Tennessee are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 4 of the Complaint, and, accordingly, deny the same.

5. First Horizon and First Tennessee are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 5 of the Complaint, and, accordingly, deny the same.

6. First Horizon and First Tennessee are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 6 of the Complaint, and, accordingly, deny the same.

7. First Horizon and First Tennessee are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 7 of the Complaint, and, accordingly, deny the same.

8. First Horizon and First Tennessee are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 8 of the Complaint, and, accordingly, deny the same.

9. First Horizon and First Tennessee are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 9 of the Complaint, and, accordingly, deny the same.

10. First Horizon and First Tennessee are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 10 of the Complaint, and, accordingly, deny the same.

11. First Horizon and First Tennessee are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 11 of the Complaint, and, accordingly, deny the same.

12. First Horizon and First Tennessee are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 12 of the Complaint, and, accordingly, deny the same.

13. First Horizon and First Tennessee are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 13 of the Complaint, and, accordingly, deny the same.

14. First Horizon and First Tennessee are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 14 of the Complaint, and, accordingly, deny the same.

15. First Horizon and First Tennessee are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 15 of the Complaint, and, accordingly, deny the same.

16. First Horizon and First Tennessee are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 16 of the Complaint, and, accordingly, deny the same.

17. First Horizon and First Tennessee are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 17 of the Complaint, and, accordingly, deny the same.

18. First Horizon and First Tennessee are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 18 of the Complaint, and, accordingly, deny the same.

19. First Horizon and First Tennessee are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 19 of the Complaint, and, accordingly, deny the same.

20. First Horizon and First Tennessee admit that First Horizon is a Tennessee corporation with a principal place of business at the address listed. First Horizon and First Tennessee further admit that Mr. Billings is a registered agent for First Horizon. Otherwise, First Horizon and First Tennessee deny the allegations of paragraph 20 of the Complaint.

21. First Horizon and First Tennessee admit the allegations of paragraph 21 of the Complaint.

22. First Horizon and First Tennessee are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 22 of the Complaint, and, accordingly, deny the same.

23. First Horizon and First Tennessee are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 23 of the Complaint, and, accordingly, deny the same.

24. First Horizon and First Tennessee are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 24 of the Complaint, and, accordingly, deny the same.

25. First Horizon and First Tennessee are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 25 of the Complaint, and, accordingly, deny the same.

26. First Horizon and First Tennessee are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 26 of the Complaint, and, accordingly, deny the same.

27. First Horizon and First Tennessee are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 27 of the Complaint, and, accordingly, deny the same.

28. First Horizon and First Tennessee are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 28 of the Complaint, and, accordingly, deny the same.

29. First Horizon and First Tennessee are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 29 of the Complaint, and, accordingly, deny the same.

30. First Horizon and First Tennessee are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 30 of the Complaint, and, accordingly, deny the same.

31. First Horizon and First Tennessee are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 31 of the Complaint, and, accordingly, deny the same.

32. First Horizon and First Tennessee are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 32 of the Complaint, and, accordingly, deny the same.

33. First Horizon and First Tennessee are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 33 of the Complaint, and, accordingly, deny the same.

34. First Horizon and First Tennessee are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 34 of the Complaint, and, accordingly, deny the same.

35. First Horizon and First Tennessee are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 35 of the Complaint, and, accordingly, deny the same.

36. First Horizon and First Tennessee are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 36 of the Complaint, and, accordingly, deny the same.

37. First Horizon and First Tennessee are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 37 of the Complaint, and, accordingly, deny the same.

38. First Horizon and First Tennessee are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 38 of the Complaint, and, accordingly, deny the same.

39. First Horizon and First Tennessee are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 39 of the Complaint, and, accordingly, deny the same.

40. First Horizon and First Tennessee are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 40 of the Complaint, and, accordingly, deny the same.

41. First Horizon and First Tennessee are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 41 of the Complaint, and, accordingly, deny the same.

42. First Horizon and First Tennessee are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 42 of the Complaint, and, accordingly, deny the same.

43. First Horizon and First Tennessee are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 43 of the Complaint, and, accordingly, deny the same.

44. First Horizon and First Tennessee are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 44 of the Complaint, and, accordingly, deny the same.

45. First Horizon and First Tennessee are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 45 of the Complaint, and, accordingly, deny the same.

46. First Horizon and First Tennessee are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 46 of the Complaint, and, accordingly, deny the same.

47. First Horizon and First Tennessee are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 47 of the Complaint, and, accordingly, deny the same.

48. First Horizon and First Tennessee are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 48 of the Complaint, and, accordingly, deny the same.

49. First Horizon and First Tennessee are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 49 of the Complaint, and, accordingly, deny the same.

50. First Horizon and First Tennessee are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 50 of the Complaint, and, accordingly, deny the same.

51. First Horizon and First Tennessee are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 51 of the Complaint, and, accordingly, deny the same.

52. First Horizon and First Tennessee are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 52 of the Complaint, and, accordingly, deny the same.

53. First Horizon and First Tennessee are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 53 of the Complaint, and, accordingly, deny the same.

54. First Horizon and First Tennessee are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 54 of the Complaint, and, accordingly, deny the same.

55. First Horizon and First Tennessee are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 55 of the Complaint, and, accordingly, deny the same.

56. First Horizon and First Tennessee are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 56 of the Complaint, and, accordingly, deny the same.

57. First Horizon and First Tennessee are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 57 of the Complaint, and, accordingly, deny the same.

58. First Horizon and First Tennessee are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 58 of the Complaint, and, accordingly, deny the same.

II. JURISDICTION AND VENUE

59. First Horizon and First Tennessee admit that the Complaint alleges that this is an action for patent infringement under the provisions of the Patent Laws of the United States of America, Title 35, United States Code. First Horizon and First Tennessee further admit that subject-matter jurisdiction of patent claims is conferred upon this Court by 28 U.S.C. § 1338. First Horizon and First Tennessee deny any patent infringement.

60. First Horizon and First Tennessee deny the allegations of paragraph 60 as to First Horizon. First Horizon and First Tennessee admit that First Tennessee does business in Texas. As to the allegations regarding other named defendants, First Horizon and First Tennessee are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 60 of the Complaint, and, accordingly, deny the same.

61. First Horizon and First Tennessee admit that 28 U.S.C. §§ 1391 and 1400 govern the venue of patent claims. First Horizon and First Tennessee deny any patent infringement.

62. First Horizon and First Tennessee admit that First Tennessee is a customer of Viewpointe Archive Services, LLC. Otherwise, First Horizon and First Tennessee deny the allegations of paragraph 62 of the Complaint as to them. As to the allegations regarding other named defendants, First Horizon and First Tennessee are without knowledge or information

sufficient to form a belief as to the truth of the allegations of paragraph 62 of the Complaint, and, accordingly, deny the same.

63. First Horizon and First Tennessee deny the allegations of paragraph 63 of the Complaint as to them. As to the allegations regarding other named defendants, First Horizon and First Tennessee are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 63 of the Complaint, and, accordingly, deny the same.

64. First Horizon and First Tennessee are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 64 of the Complaint, and, accordingly, deny the same.

65. First Horizon and First Tennessee are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 65 of the Complaint, and, accordingly, deny the same.

III. PATENT INFRINGEMENT

66. First Horizon and First Tennessee admit that on June 8, 1999, U.S. Patent No. 5,910,988 ("the '988 patent") entitled "REMOTE IMAGE CAPTURE WITH CENTRALIZED PROCESSING AND STORAGE" was issued with Claudio Ballard as the named inventor. First Horizon and First Tennessee are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 66 of the Complaint, and, accordingly, deny the same.

67. First Horizon and First Tennessee admit that on February 29, 2000, U.S. Patent No. 6,032,137 ("the '137 patent") entitled "REMOTE IMAGE CAPTURE WITH CENTRALIZED PROCESSING AND STORAGE" was issued with Claudio Ballard as the named inventor. First Horizon and First Tennessee are without knowledge or information

sufficient to form a belief as to the truth of the remaining allegations of paragraph 67 of the Complaint, and, accordingly, deny the same.

68. First Horizon and First Tennessee admit that on November 23, 1993, U.S. Patent No. 5,265,007 entitled "CENTRAL CHECK CLEARING SYSTEM" was issued with John Barnhard, Thomas K. Bowen, Terry L. Geer, and John W. Liebersbach as the named inventors. First Horizon and First Tennessee are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 68 of the Complaint, and, accordingly, deny the same.

69. First Horizon and First Tennessee admit that on December 10, 1996, U.S. Patent No. 5,583,759 entitled "MECHANISM FOR EXPEDITING THE DEPOSIT, TRANSPORT AND SUBMISSION OF CHECKS INTO THE PAYMENT SYSTEM" was issued with Terry L. Geer as the named inventor. First Horizon and First Tennessee are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 69 of the Complaint, and, accordingly, deny the same.

70. First Horizon and First Tennessee admit that on February 10, 1998, U.S. Patent No. 5,717,868 entitled "ELECTRONIC PAYMENT INTERCHANGE CONCENTRATOR" was issued with David L. James as the named inventor. First Horizon and First Tennessee are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 70 of the Complaint, and, accordingly, deny the same.

71. First Horizon and First Tennessee admit that on July 27, 1999, U.S. Patent No. 5,930,778 entitled "SYSTEM FOR EXPEDITING THE CLEARING OF FINANCIAL INSTRUMENTS AND COORDINATING THE SAME WITH INVOICE PROCESSING AT THE POINT OF RECEIPT" was issued with Terry L. Geer as the named inventor. First Horizon

and First Tennessee are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 71 of the Complaint, and, accordingly, deny the same.

72. First Horizon and First Tennessee deny the allegations of paragraph 72 of the Complaint in that Plaintiff is not entitled to any recovery under 35 U.S.C. § 285..

IV. COUNT ONE - THE ’988 DEFENDANTS

73. First Horizon and First Tennessee deny the allegations of paragraph 73 as to them. As to the allegations regarding other named defendants, First Horizon and First Tennessee are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 73 of the Complaint, and, accordingly, deny the same.

74. First Horizon and First Tennessee deny the allegations of paragraph 74 as to them. As to the allegations regarding other named defendants, First Horizon and First Tennessee are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 74 of the Complaint, and, accordingly, deny the same.

75. First Horizon and First Tennessee deny the allegations of paragraph 75 as to them. As to the allegations regarding other named defendants, First Horizon and First Tennessee are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 75 of the Complaint, and, accordingly, deny the same.

76. First Horizon and First Tennessee are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 76 of the Complaint, and, accordingly, deny the same.

V. COUNT TWO - THE ’137 DEFENDANTS

77. First Horizon and First Tennessee deny the allegations of paragraph 77 as to them. As to the allegations regarding other named defendants, First Horizon and First Tennessee are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 77 of the Complaint, and, accordingly, deny the same.

78. First Horizon and First Tennessee deny the allegations of paragraph 78 as to them. As to the allegations regarding other named defendants, First Horizon and First Tennessee are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 78 of the Complaint, and, accordingly, deny the same.

79. First Horizon and First Tennessee deny the allegations of paragraph 79 as to them. As to the allegations regarding other named defendants, First Horizon and First Tennessee are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 79 of the Complaint, and, accordingly, deny the same.

80. First Horizon and First Tennessee are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 80 of the Complaint, and, accordingly, deny the same.

VI. COUNT THREE - THE ’007 DEFENDANTS

81. First Horizon and First Tennessee are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 81 of the Complaint, and, accordingly, deny the same.

82. First Horizon and First Tennessee are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 82 of the Complaint, and, accordingly, deny the same.

83. First Horizon and First Tennessee are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 83 of the Complaint, and, accordingly, deny the same.

VII. COUNT FOUR - THE ’759 DEFENDANTS

84. First Horizon and First Tennessee are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 84 of the Complaint, and, accordingly, deny the same.

85. First Horizon and First Tennessee are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 85 of the Complaint, and, accordingly, deny the same.

86. First Horizon and First Tennessee are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 86 of the Complaint, and, accordingly, deny the same.

VIII. COUNT FIVE - THE ’868 DEFENDANTS

87. First Horizon and First Tennessee are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 87 of the Complaint, and, accordingly, deny the same.

88. First Horizon and First Tennessee are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 88 of the Complaint, and, accordingly, deny the same.

89. First Horizon and First Tennessee are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 89 of the Complaint, and, accordingly, deny the same.

IX. COUNT SIX - THE ’778 DEFENDANTS

90. First Horizon and First Tennessee are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 90 of the Complaint, and, accordingly, deny the same.

91. First Horizon and First Tennessee are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 91 of the Complaint, and, accordingly, deny the same.

92. First Horizon and First Tennessee are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 92 of the Complaint, and, accordingly, deny the same.

X. PRAYER FOR RELIEF

With respect to the allegations in this section of the Complaint, First Horizon and First Tennessee admit that Plaintiff seeks the relief set forth therein, but denies that Plaintiff is entitled to any of the relief requested against First Horizon and First Tennessee. Otherwise, the allegations of the “Prayer for Relief” section of the Complaint are denied.

ADDITIONAL DEFENSES

1. First Horizon and First Tennessee have not infringed and are not infringing any valid and enforceable claim of the patents in issue.

2. First Horizon and First Tennessee have not contributed to and are not contributing to the infringement of any valid and enforceable claim of the patents in issue.

3. First Horizon and First Tennessee have not induced and are not inducing the infringement of any valid and enforceable claim of the patents in issue.

4. The patents in issue are invalid because they fail to meet the conditions set forth for patentability in Title 35, United States Code, including, but not limited to §§ 101, 102, 103 and 112 thereof.

5. Plaintiff's First Amended Complaint, and each purported claim against First Horizon and First Tennessee alleged therein, fails to state facts upon which relief can be granted against First Horizon and First Tennessee.

6. Should First Horizon and First Tennessee be found to infringe the '988 patent and/or '137 patent, such infringement was not willful.

7. Plaintiff's claims are barred by waiver, laches and equitable estoppel.

8. To the extent Plaintiff may be entitled to damages, any claim for damages for patent infringement by Plaintiff is limited by 35 U.S.C. § 287 to those damages occurring only after notice of infringement.

9. The patents in issue are unenforceable due to inequitable conduct before the USPTO of the patentee by failing to disclose information or affirmatively misrepresenting information to the USPTO of which the patentee was aware was material to the examination of the Application. By way of example but without limitation, the patentee failed to advise the USPTO of material prior information regarding prior art.

First Horizon and First Tennessee reserve the right to assert additional defenses and counterclaims after further investigation, including defenses related to validity and enforceability.

COUNTERCLAIM

First Horizon and First Tennessee assert the following counterclaim against Plaintiff/Counter-Defendant DataTreasury Corporation:

Jurisdiction and Venue

1. This Court has jurisdiction over the claims for declaratory relief arising under the patent laws of the United States, 35 U.S.C. § 1 *et seq.*, pursuant to 28 U.S.C. §§1331, 1338(a) and 2201.

2. Venue in this judicial district is proper pursuant to 28 U.S.C. §1391.

The Parties

3. As stated in Plaintiff's First Amended Complaint, Plaintiff/Counter-Defendant DataTreasury Corporation ("DataTreasury") is a Delaware corporation with its principal place of business at 101 East Park Blvd. #600, Plano, Texas 75074.

4. Defendant/Counter-Plaintiff First Horizon National Corporation is a Tennessee corporation with its principal place of business at 165 Madison, Memphis, Tennessee 38103.

5. Defendant/Counter-Plaintiff First Tennessee Bank National Association is a national banking association organized under the laws of the United States with its principal place of business at 165 Madison, Memphis, Tennessee 38103.

Declaratory Judgment

6. Defendant/Counter-Plaintiffs First Horizon and First Tennessee incorporate the allegations contained above in their Original Answer and paragraphs 1 through 5 of this Counterclaim.

7. Plaintiff/Counter-Defendant DataTreasury has filed suit in this matter asserting infringement of one or more claims of the '988 patent and the '137 patent. First Horizon and

First Tennessee deny any liability for infringement and asserts that the ’988 patent and the ’137 patent are invalid and unenforceable. The allegations in the First Amended Complaint have created an actual and justiciable controversy between DataTreasury and First Horizon and First Tennessee concerning the validity, enforcement, and infringement of the ’988 patent and the ’137 patent.

8. Pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*, First Horizon and First Tennessee are entitled to a declaratory judgment that the ’988 patent and the ’137 patent are invalid for failure to meet the conditions set forth in 35 U.S.C. §§ 101, 102, 103 and 112.

9. First Horizon and First Tennessee are also entitled to a declaratory judgment that they have not infringed, contributed to the infringement of, or induced the infringement of, and are not infringing, contributing to the infringement of, or inducing the infringement of any valid and enforceable claim of the ’988 patent and the ’137 patent.

10. Further, or in the alternative, this is an exceptional case under 35 U.S.C. § 285 so as to entitle First Horizon and First Tennessee to recover their reasonable attorneys’ fees.

WHEREFORE, PREMISES CONSIDERED, First Horizon National Corporation and First Tennessee Bank National Association respectfully request:

a. that Plaintiff take nothing by this action;

b. that the Court declare the ’988 patent has not been infringed by First Tennessee and/or First Horizon;

c. that the Court declare the ’137 patent has not been infringed by First Tennessee and/or First Horizon;

d. that the Court declare the ’988 patent is invalid and/or unenforceable;

e. that the Court declare the ’137 patent is invalid and/or unenforceable;

f. that the Court declare this case is exceptional under 35 U.S.C. § 285 and that First Horizon and First Tennessee be awarded their costs, expenses, and attorneys' fees incurred herein;

g. for such other and further relief to which First Horizon and First Tennessee may show themselves justly entitled.

Dated: January 11, 2007

Respectfully submitted,

ANDREWS KURTH LLP

By: /S/ *Tonya M. Gray*
Jerry L. Beane
Texas Bar No. 01966000
jerrybeane@andrewskurth.com
Gerald C. Conley
Texas Bar No. 04664200
geraldconley@andrewskurth.com
Kay Lynn Brumbaugh
Texas Bar No. 00785152
kaylynnbrumbaugh@andrewskurth.com
Tonya M. Gray
Texas Bar No. 24012726
tonyagray@andrewskurth.com

1717 Main Street, Suite 3700
Dallas, Texas 75201
Telephone: (214) 659-4400
Facsimile: (214) 659-4401

ATTORNEYS FOR DEFENDANTS FIRST HORIZON NATIONAL CORPORATION AND FIRST TENNESSEE BANK NATIONAL ASSOCIATION

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of this document has been served on all counsel of record via electronic mail through Local Rule CV-5(a) on this the 11th day of January, 2007.

/S/ *Tonya M. Gray*
Tonya M. Gray